IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 441 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTI OIL MILLS

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for MR SV RAJU for Petitioner

MR KC SHAH, Ld. APP for Respondent No. 1

MR MR BHATT for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/05/2000

ORAL JUDGEMENT

Heard the learned advocates. Mr MR Bhatt, the learned advocate for respondent no. 2 is not present on call.

The present Revision Application preferred under sec. 397 CRPC arises of the judgment and order dated 28th October, 1993 by the learned Judicial Magistrate,First Class, Deesa passed below application dated 25th October, 1993 made in Police Station Diary Entry No. 19/1993 of Dhanera Police Station.

It appears that the petitioner herein is a manufacturer of edible oil in the State of Rajsthan and had sold a quantity of oil to a dealer in Bombay. The oil was sent by Tanker bearing Registration No. GJ-12-T-7447. After delivering the oil to the purchaser in Bombay, the driver collected the sale proceeds in cash to the tune of Rs. 2,84,310/ and made return journey. On the return trip, the driver was intercepted by the police at Dhanera under sec. 41(1)(d) CRPC. The aforesaid sum of Rs. 2,84,310/ was found on the person of the driver. The aforesaid station entry was made against the driver and the cleaner and the cash worth Rs.2,84,310/ was seized. Both the driver and the cleaner were arrested and were released on bail. In view of the seizure of the cash, the petitioner made the above referred application for recovery of muddamal cash. The application was contested by the Income Tax Department. It was contended that the circumstance of driver carrying a large amount of cash was suspicious; that the documentary evidence produced by the petitioner was not reliable. The petitioner was liable to be assessed under the Income Tax Act and was also liable to be prosecuted. That the Income Tax Officials, under sec. 132(5) of the Income Tax Act, had powers to seize the cash and to make an order estimating the undisclosed income in a summary manner, calculating amount of tax on income so estimated, determining the amount of interest payable and the amount of penalty imposable in accordance with the Act and to specify the amount that will be required to satisfy any existing liability under the Act. It was, therefore, urged that the muddamal cash be handedover to the Income Tax Department. The learned Magistrate, having considered the rival contentions, was of the opinion that the muddamal cash may not be handedover to either of the parties and rejected the application. Feeling aggrieved, the petitioner has preferred the present revision application.

Mr Goswami, the learned advocate upon receiving instructions from the petitioner, states at the Bar that no proceedings have been initiated by the Income Tax Department in respect of the above referred seizure. It is contended that the muddamal property being cash and the petitioner being the owner ought to have been

handedover to the petitioner. Besides, the petitioner had produced all the documentary evidence to evidence that the aforesaid amount was received by him as a sale proceeds of the edible oil and, there was no justification either in the seizure made by the police or in retaining the said amount with police.

On the facts and in the circumstances of the case, and more particularly, the Income Tax Department having not initiated any proceedings in respect of the seized amount, I find it just and proper that the muddamal cash should be handedover to the owner, the petitioner. The Revision Application is, therefore, allowed. The impugned order dated 28th October, 1993 made by the learned Judicial Magistrate, First Class, Deesa in the Police Station Diary Entry No. 19/1993 is quashed and set aside. The muddamal cash i.e. Rs. 2,84,310/ is ordered to be handedover to the petitioner on his furnishing a personal bond in the sum of Rs. 3 Lacs and on his furnishing security for the like amount to the satisfaction of the learned Magistrate. Rule is made absolute accordingly.

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